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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,129	12/03/2003	Eric Yarbrough	56967 DIV	4759
7590 04/23/2004 Dennis H. Lambert & Associates 7000 View Park Drive Burke, VA 22015			EXAMINER TRUONG, THANH K	
			ART UNIT 3721	PAPER NUMBER
DATE MAILED: 04/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/727,129	YARBROUGH, ERIC	
	Examiner	Art Unit	
	Thanh K Truong	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-18 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 14-18 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 14 and 15, drawn to a strapping head assembly, classified in class 53, subclass 591.
 - II. Claims 16-18, drawn to a method of applying a plurality of reinforcing straps on bulk box, classified in class 53, subclass 399.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by hand.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

2. During a telephone conversation with Mr. Dannis H. Lambert on April 16, 2004 a provisional election was made without traverse to prosecute the invention of Group II, claims 16-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14 and 15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 16-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites the limitation "the container" in lines 9 and 10. There is insufficient antecedent basis for this limitation in the claim.

Claims 17 and 18 recite the limitation "the machine" in line 2 (claim 17) and line 3 (claim 18). There are insufficient antecedent basis for this limitation in the claims.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by V.D. Bilt (3,901,138).

V.D. Bilt discloses a method comprising the steps of:

providing a plurality of spaced apart strapping head assemblies 11, 12 each operable to apply a reinforcing strap 15, 17 to the article 13 at a predetermined location on the article;

moving the article through the machine and past the strapping head assemblies;

stopping the article in a predetermined position at each strapping head assembly;

operating each strapping head assembly while the article is stopped to loop a strap around the container, apply tension to the strapping, secure the strapping to itself to form a loop of strapping closely encircling the container, and cut the loop from the supply (figure 1).

V.D. Bilt further discloses

simultaneously moving a plurality of articles through the machine (figure 1);

stopping all of the boxes at the same time, with each box positioned at a strapping head assembly (from figure 1, one sees that the article 13 can not advance unless all of them are ready to advance together, thus the articles also stop at the same time); and

simultaneously operating all strapping head assemblies to simultaneously apply straps to all of the boxes.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over V.D. Bilt (3,901,138).

As discussed above in paragraph 6 of this office action, V.D. Bilt discloses the claimed invention, except for a plurality of pairs of strapping head assemblies arranged in series. It would have been obvious to one having ordinary skill in the art at the time

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the invention was made to provide a plurality of pairs of strapping head assemblies arranged in series; this modification would provide a stronger pair of straps to support the article, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruggiere, Sr. et al. (6,074,331) in view of Meyer (5,289,668).

Ruggiere discloses a method comprising the steps of:

providing a strapping head assemblies 102 operable to apply a reinforcing strap 40 to the box 10 at a predetermined location on the article;

moving a box through the machine and past the strapping head assemblies;

stopping the box in a predetermined position at each strapping head assembly;

operating each strapping head assembly while the box is stopped to loop a strap around the container, apply tension to the strapping, secure the strapping to itself to form a loop of strapping closely encircling the container, and cut the loop from the supply (figure 8).

Ruggiere discloses the claimed invention, but does not expressly disclose the plurality of spaced apart strapping head assemblies arranged in series, and plurality of pair of strapping head assemblies.

Meyer discloses a method comprising a plurality of space apart strapping head assemblies 14. Meyer's method providing a means to apply multiple strapping to the boxes. Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Ruggiere's method and incorporating

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Meyer's method of having plurality strapping head assemblies; that is providing a plurality of strapping head assemblies 102 providing a means to simultaneously applying multiple straps to the boxes that feed through the machine.

Conclusion


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tkf
April 16, 2004.


Stephen F. Gerrity
Primary Examiner